

REMARKS

In the Office Action dated October 29, 2009, claims 1-3, 5-11 and 67-74 were examined with the result that all claims were rejected. The rejection was non-final. In response, Applicant has submitted a Declaration under Rule 131 from the inventors swearing behind the filing date of January 30, 2003 for Shirrell et al US Patent No. 6,942,909. In view of the Declaration and the following remarks, reconsideration of this application is requested.

Before turning to the rejections of record, Applicant would like to briefly summarize the Declaration under Rule 131, submitted herewith. The Declaration is signed by both co-inventors and specifically states that the invention claimed in the present patent application was conceived in reduced practice prior to January 30, 2003 which is the filing date Shirrell et al, US Patent No. 6,942,909. In support thereof, the inventors submit a five page invention disclosure document entitled "Invention Record and Report" which summarizes the invention as presently claimed. As stated in the Declaration, the "Invention Record and Report" was submitted to the assignee prior to January 30, 2003 and is in fact dated prior to January 30, 2003. The Examiner should note that on page 4 of the exhibit attached to the Declaration there is a reference to one of the inventors' personal spiral-bound note pad which contains a further description of the conception/idea, and which is dated even earlier than the date of the "Invention Record and Report." There is also a reference on that same page 4 of the exhibit that the concept was "reduced to practice." Thus, the Declaration states that the inventors conceived and reduced to practice the claimed invention prior to January 30, 2003 and includes sufficient documentation showing such conception and reduction to practice prior to January 30, 2003. As a result, the Shirrell et al '909 patent can no longer be considered a prior art reference citable against the presently claimed invention by the Examiner.

The Declaration is being submitted at this time since the Shirrell et al '909 patent was first cited by the Examiner in the Office Action dated October 29, 2009.

In the October 29, 2009 Office Action, claims 1-3, 5-11 and 67-74 were rejected under 35 U.S.C. §103(a) as being unpatentable over Shirrell et al US Patent No. 6,942,909 as the primary reference utilized by the Examiner. However, in view of the enclosed Declaration under Rule 131 submitted herewith, Applicant believes this rejection should now be withdrawn by the Examiner.

In the Office Action, claims 1, 2, 5-9, 67 and 71-74 were rejected under 35 U.S.C. §103(a) as being unpatentable over the Shirrell et al '909 patent. In response, and in view of the enclosed Declaration under Rule 131, the Shirrell et al '909 patent is no longer a prior art reference, and thus, Applicant requests the Examiner withdraw this rejection of the claims.

In the Office Action, claims 3, 10 and 11 were rejected under 35 U.S.C. §103(a) as being unpatentable over Shirrell et al '909 in view of Tuman et al, US Published Application No. 2001/0018110. In response, and in view of the enclosed Declaration under Rule 131, the Shirrell et al '909 patent is no longer a prior art reference against the presently claimed invention, and the Tuman et al published application '110 clearly does not teach or suggest the claimed invention as the Examiner utilized Tuman et al '110 merely for its teaching of breathable web material such as a non-woven substrate. Accordingly, Applicant requests the Examiner withdraw this rejection of the claims.

In the Office Action, claims 68 and 69 were rejected under 35 U.S.C. §103(a) as being unpatentable over Shirrell et al '909 in view of Mascarenhas et al US Patent No. 5,888,615. In response, and in view of the enclosed Declaration under Rule 131, the Shirrell et al '909 patent is no longer a prior art reference against these claims, and the Mascarenhas et al '615 patent clearly does not teach or suggest the claimed invention as Mascarenhas et al was merely cited for its disclosure of a nylon or acrylic polymer for use as the base layer claimed. Accordingly, Applicant requests the Examiner withdraw this rejection.

In the Office Action, claim 70 was rejected under 35 U.S.C. §103(a) as being unpatentable over Shirrell et al '909 in view of Velazquez et al US Patent No. 5,614,297. In response, and in view of the enclosed Declaration under Rule 131, the Shirrell et al '909 patent is no longer a prior art reference against this claim, and the Velazquez et al '297 patent clearly does not teach or suggest the claimed invention since Velazquez et al was merely cited for its teaching of using a poly (vinyl chloride) as the base layer. Accordingly, Applicant requests the Examiner withdraw this rejection against claim 70.

In the Office Action, claims 1, 2, 5-9, 11 and 71-74 were provisionally rejected on ground of non-statutory obviousness type double patenting as being unpatentable over co-pending application no. 10/981,046 in view of Shirrell et al '909. In response, and in view of the enclosed Declaration under Rule 131, the Shirrell et al '909 patent is no longer a prior art reference against these claims. Thus, the Shirrell et al '909 reference cannot be combined with co-pending

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Amendment Dated April 29, 2010
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application no. 10/981,046 by the Examiner to issue a provisional obviousness type double patenting rejection. As such, Applicant requests the Examiner withdraw this obviousness type double patenting rejection of the claims.

In the Office Action, claims 1, 2, 5-10 and 67-74 were provisionally rejected on the ground of non-statutory obviousness type double patenting as being unpatentable over co-pending application no. 10/867,438 in view of the Shirrell et al '909 patent. In response, and in view of the enclosed Declaration under Rule 131, the Shirrell et al '909 patent is no longer a prior art reference citable against these claims, and as such cannot be combined with co-pending application no. 10/867,438. As a result, Applicant requests the Examiner withdraw the obviousness type double patenting rejection of these claims.

In view of the Declaration under Rule 131 filed herewith, and the above comments, Applicant believes that claims 1-3, 5-11 and 67-74 are all now allowable.

Respectfully submitted,

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